BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.156.625, unprofessional conduct, the adoption of NEW RULES I-XVI, and the repeal of ARM 24.156.1801, 24.156.1802, 24.156.1803, 24.156.1804, 24.156.1805, 24.156.1806, 24.156.1807, 24.156.1901, 24.156.1902, 24.156.1903, 24.156.1904, 24.156.1905, 24.156.2001, 24.156.2002, 24.156.2003, 24.156.2004, 24.156.2005, 24.156.2011, 24.156.2012, 24.156.2013 and 24.156.2014, all pertaining to emergency medical technician licensure	)	NOTICE OF AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 28, 2003, the Board of Medical Examiners published MAR Notice No. 24-156-60 regarding the public hearing on the proposed amendment, adoption and repeal of the above-stated rules relating to emergency medical technician licensure at page 1841 of the 2003 Montana Administrative Register, issue no. 16.

2. On September 20, 2003 and September 25, 2003, public hearings on the proposed amendment, adoption and repeal of the above-stated rules were conducted in Glasgow and Helena, and members of the public spoke at the public hearings. In addition, written comments were received prior to the closing of the comment period on October 1, 2003.

3. The Board of Medical Examiners (Board) has thoroughly considered all of the comments made. A summary of the comments received (grouped by rule) and the Board's responses are as follows:

ARM 24.156.625 UNPROFESSIONAL CONDUCT:

Comment 1: Three comments were received in opposition to amending this rule to define unprofessional conduct to include failing, as a medical director, to supervise, manage, direct and train EMTs. Two commenters stated that the amendment places too much emphasis on the medical director and is punitive and insulting because it places this conduct in the same category as sexual exploitation and jeopardizes the physician's license even though the physician generally serves without compensation as a

medical director. A third commenter stated that the medical director is not in a position of management and does not personally supervise EMTs.

Response 1: The Board acknowledges the first two commenters' statements and notes that unprofessional conduct includes a number of behaviors, acts and omissions that are not equally weighted in terms of how the Board considers them. However, the Board believes that it is important to define failure to supervise adequately as a medical director in the category of unprofessional conduct so that physicians engaging in egregious conduct can be disciplined. The Board notes that the increased level of responsibility of the ALS providers is reflected in the emphasis placed on the medical director.

The Board agrees with the third commenter that the medical director supervises, appropriately directs and trains EMTs, PA-Cs and residents, but does not manage EMTs, PA-Cs or residents. The Board affirms that the medical director does manage a medical assistant under the physician's supervision. The Board voted to delete the word "manage" from ARM 24.156.625(1)(x), (z) and (aa).

NEW RULE I (ARM 24.156.2701) DEFINITIONS:

Comment 2: One comment was received that asked the Board to include specific language about the levels of EMT licensure and endorsements in the definition of "approved program."

Response 2: The Board believes that there is no need for specific language because the approval is encompassing of any and all courses approved by the Board.

Comment 3: One comment was received that proposed that the definition of "clinical preceptor" in NEW RULE I(5) be clarified to specify a physician or registered nurse as a clinical preceptor.

Response 3: The Board does not agree with this proposed change because the rule as it is written means an individual trained to a level greater than a student. Listing all of the specialties and health care professionals who could be preceptors would be unduly cumbersome in a definition. In addition, such a specific list might give rise to an inference that an inadvertently omitted specialty or class of persons was not authorized to act as a preceptor.

Comment 4: One comment was received that strongly supported the definition of EMS as pre-hospital care and transportation because it comports with 50-6-302(4), MCA.

Response 4: The Board acknowledges the comment.

Comment 5: Two comments were received that questioned the

definition of "EMS" in NEW RULE I(7) as "what is commonly referred to as an ambulance service". The comments noted that the ambulance is only a portion of the service and that non-transporting units are the lifeline of the patient until the hand-off to the ambulance.

Response 5: The Board agrees that the definition of "emergency medical service" should not include the language "EMS is the official designation for what is commonly referred to as an ambulance service" and voted to delete that language from the rule.

Comment 6: One comment was received that proposed a different definition for NEW RULE I(7). The commenter asked that EMS be defined as "the combination of people and resources necessary to provide an emergency response to the public that is often multi-jurisdictional and always 'all-encompassing' from the initiation of a call for help to the return of the patient to the community."

Response 6: After lengthy discussion the Board voted to amend the definition to include the concept of EMS as being furnished by a combination of persons licensed by the Board and resources licensed by the Department of Public Health and Human Services.

Comment 7: One comment was received in support of the definition in NEW RULE I(8) of an EMT as "any pre-hospital emergency care personnel licensed by the board."

Response 7: The Board acknowledges the comment.

Comment 8: One comment was received that proposed a different definition for NEW RULE I(13), "EMT Service."

Response 8: Upon consideration, the Board realized that NEW RULE I(13) was redundant and encompassed in NEW RULE I(7). The Board voted to delete NEW RULE I(13) and thanks the commenter for bringing this to its attention.

Comment 9: One comment proposed changing the definition in NEW RULE I(19) of "service medical director" to include advanced practice registered nurses.

Response 9: The Board believes that pursuant to 50-6-203, MCA, it has rule-making responsibility regarding EMTs, including certification and other performance-related matters. The Board, as the governmental entity that is responsible for the regulation of the practice of medicine as well as the certification of EMTs, believes it is appropriate that the Board be able to ensure that its licensees and certificate holders are directly accountable to the Board for matters pertaining to professional conduct. The Board specifically wants all service medical directors to be persons licensed by and under the jurisdiction of the Board of Medical Examiners. This includes

PA-Cs who practice dependently under a physician's supervision. The Board notes that advanced practice registered nurses are not (as nurses) subject to the jurisdiction of the Board. The inclusion of advanced practice registered nurses within the definition of "service medical director" could lead to a situation where a service medical director was not accountable to the Board, and arguably not subject to the Board's rules.

Comment 10: One comment proposed that service medical directors be compensated or receive assistance with additional costs in their liability insurance.

Response 10: The Board does not have the authority to specify the economic relationship between a licensee acting as a service medical director and the service entity (which may be either a public sector or private sector entity). As to the liability insurance problem, the Board notes that there already is statutory protection for volunteer service medical directors.

Comment 11: With respect to NEW RULE I(19), one commenter suggested that rural doctors may not have the time to spend with EMS and that something "more in the middle" should be allowed as medical directors. Another comment was received that stated that rural providers would be hard hit by the financial costs associated with this definition.

Response 11: The Board acknowledges the comments. As to rural doctors not having time to spend with EMS, the Board reiterates its belief that service medical directors must be licensed by and under the jurisdiction of the Board. If the commenter means by the phrase "something more in the middle" means that individuals not licensed by the Board should be allowed, the Board believes (as noted in Response 9) such individuals are not appropriate to serve as service medical directors.

The Board is uncertain what personal financial costs associated with this definition would fall upon rural providers, unless the comment means a rural ambulance service might have to pay for a medical director.

NEW RULE II (ARM 24.156.2705) UNPROFESSIONAL CONDUCT:

Comment 12: One comment was received in support of NEW RULE II(1)(x) which holds instructors responsible for courses taught under their direction.

Response 12: The Board acknowledges the comment.

Comment 13: Two comments were received in opposition to NEW RULE II(1)(x). One of the commenters stated that his license would be on the line, even though he is not reimbursed for teaching, and that he might not precept because of this rule. The second commenter stated that too much responsibility was placed on the preceptor and that preceptors would refuse to

precept since they aren't being reimbursed.

Response 13: The Board considered both comments, but believes that the fact that a person voluntarily precepts, without compensation, doesn't affect the responsibility of the preceptor. The same professional standards apply whether the individual is compensated or not. The rule formalizes the already accepted standards regarding preceptors. The Board concludes the rule does not place an additional burden on preceptors.

NEW RULE IV (ARM 24.156.2713) EMT LICENSE APPLICATION:

Comment 14: One comment was received that questioned whether the information from a National Practitioner Data Bank (NPDB) self-query is useful, or just another fee imposed on the applicant.

Response 14: The Board has found, in the past, that NPDB self-queries are important sources of information that would otherwise not have been discovered about applicants. NPDB self-queries are especially valuable in instances in which applicants licensed in one particular health care profession are sanctioned; if these applicants seek licensure in another health care profession or in another jurisdiction, the Board might not know about the previous problems without the self-query. As such, the Board concludes that requiring NPDB self-queries is an appropriate step in protecting the public health and safety. The Board believes the cost is a small imposition considering the problems that the self-queries eliminate.

NEW RULE V (ARM 24.156.2715) OUT-OF-STATE EMT APPLICANT:

Comment 15: One comment was received that questioned whether registered nurses (RNs) would no longer be able to be grand-fathered into the EMT-P level.

Response 15: The Board emphasizes that NEW RULE V is for out-of-state applicants. For the purposes of section 37-1-204, MCA, the Board defines "substantially equivalent" to mean training in accordance with Board-approved USDOT curriculum standards, passage of written or practical exams or, in the opinion of the Board, training, experience and passage of an exam equivalent to current Board standards. On-the-job training does not qualify an applicant. However, having the training, experience and exam qualification to be nationally registered would be deemed "substantially equivalent" by the Board.

NEW RULE VI (ARM 24.156.2717) EMT LICENSE RENEWAL

Comment 16: Staff noticed that NEW RULE VI(3)(a) apparently erroneously included a January 1, 2007, deadline.

Response 16: The Board agrees that the January 1, 2007,

deadline in NEW RULE VI(3)(a) is in error. A person with an existing first responder license or first responder/ambulance license has several renewal options. First, if the individual wants to have an EMT-F license, the individual can either go through the usual National Registry of Emergency Medical Technicians (NREMT) process as provided in subsection (3)(a) or take the 16 hour course, as provided in subsection (3)(b). If the person wants to simply renew an existing first responder license, the person may do so for the period through 2006, as provided by section (4). However, section (4) provides that after December 31, 2006, the Board will not renew the "first responder" class of licenses. A person wanting to provide first responder services after January 1, 2007, will be required to hold an EMT-F license.

NEW RULE VIII (ARM 24.156.2731) FEES:

Comment 17: Two comments were received that opposed the new fees, especially the late fee, as being excessive and likely to drive off "already scarce rural EMTs."

Response 17: The Board acknowledges the concerns expressed. In light of the transition from a no-fee system of registration by DPHHS to a fee-based licensing system operated by the Board, and the fact that many EMTs are either volunteers or government agency staff, the Board is not adopting a late fee at this time, and has amended the rule accordingly. The Board notes that it intends to start charging appropriate late fees in 2007, as part of making sure that the EMT licensing program is self-supporting.

Comment 18: One commenter identified a typographical error in subsection (1)(g), that "EMT-D" should be "EMT-B".

Response 18: The Board agrees with the comment and has amended the rule accordingly.

NEW RULE X (ARM 24.156.2745) EXAMINATIONS:

Comment 19: Seven comments were received in opposition to NEW RULE X. Those commenters were opposed to local examination, felt that the exam system in place was excellent, and wanted State oversight. The commenters also stated they feared inconsistencies, irregularities, delays and increased costs if local examinations were permitted.

Response 19: The Board acknowledges the concerns. In re-reading the proposed text of section (2) of the rule, the Board has determined that part of the language was improperly punctuated and thus distorted the meaning of the rule. The Board has determined that in order to maintain examination security, consistency and accountability the medical director must be personally present during the administration of the basic level examination. The Intermediate and Paramedic level

examinations require a representative of the National Registry and board designee to administer the examination in order to maintain consistency and accountability. Additionally, because the content of the exams will be mandated by the National Registry, applicants will be able to take courses and exams at any location. The cost is expected to be less than the approximately $175 per applicant that the state is currently paying for examination. The Board voted to clarify the language of NEW RULE X regarding the role of service medical directors in administering examinations.

NEW RULE XI (ARM 24.156.2751) LEVELS OF EMT LICENSURE INCLUDING ENDORSEMENTS:

Comment 20: Five comments were received that supported the new categories of EMS skill levels but were concerned about possible Medicare and Medicaid reimbursement problems with EMT-Bs starting intravenous infusions (IVs). The commenters stated that if EMT-Bs are allowed to start IVs, the federal reimbursement plans will consider IVs to be a basic skill and ALS services will lose out.

Response 20: The Board acknowledges the concerns, but concludes that the issue has been resolved because anything above EMT-B, without any endorsements, is considered to be ALS and requires a medical director. BLS is any provider that functions at the level of EMT-B (basic) without endorsement or levels, which includes EMT-Fs (first responders). The Board voted to clarify this by including definitions of ALS and BLS in NEW RULE I.

Comment 21: One comment was received in which the commenter stated the he was being asked to endorse levels without knowing what the levels entailed.

Response 21: The Board believes that NEW RULE XI specifically and adequately sets out what the levels entail by designating each level with the description of the tasks entailed in each level.

Comment 22: On commenter was opposed to EMT-Is performing immunizations and proposed adding the language "only related to disaster preparedness and response" to NEW RULE XI(1)(c)(ii). The same commenter also opposed the listing of "drips and pumps" in NEW RULE XI(1)(c)(iii) as an EMT-I task, stating that drips and pumps used for medications other than for pediatric patients are allowable only at the EMT-P level. The commenter urged greater specificity in this new rule and generally expressed concern that tasks that previously were EMT-P tasks were now EMT-I tasks, and that EMT-B tasks were now what were previously EMT-I tasks, reflecting a "drift downward" that might affect patient safety.

Response 22: The Board acknowledges the comment but concludes that the new curriculum provides more training involving

additional tasks, which thereby improves the standard of care provided to the public. The Board notes that the new rules provide for progressive levels of increased training and skills. An EMT-B who wants to add skills needs to have the EMT's local medical director agree to the training and extra responsibility. The Board concludes that additional training can only improve the services provided to the patient population.

The Board declines to amend the rule to include the suggested language regarding EMTs providing immunizations only for "disaster preparedness and response" because of potential for unduly limiting care during legitimate health care emergencies for which a disaster declaration had not been issued by the Governor. An example of such a situation is an outbreak of influenza in a rural community. While there might be a public health emergency within that community which requires immunizing all local residents, such an emergency would probably not likely rise to the level of the Governor declaring a formal "disaster." The Board concludes that including the suggested language would unduly limit the use of EMTs in responding to public health emergencies, and therefore is not in the best interest of preserving the public health, safety and welfare.

Comment 23: One comment was received that opposed the new levels and urged that the National Registry levels be maintained.

Response 23: The Board believes that it is in the best interest of Montana and Montanans to modify the National Registry levels by allowing supplemental endorsements to the National Registry levels. The Board notes that because of the substantial differences between scope of the 1985 version of the curriculum and the 1999 version, a strict adherence to National Registry levels could have the effect, as an example of prohibiting an EMT with 15 years experience in starting IVs from being able to continue to provide that level of service (starting IVs) until the EMT had completed whatever version(s) of the new curriculum that includes starting IVs. The Board concludes that due to Montana's rural character, and the relative scarcity of health care providers (especially in pre-hospital emergency care) that it is justified in allowing supplemental endorsements.

NEW RULE XII (ARM 24.156.2754) INITIAL EMT COURSE REQUIREMENTS:

Comment 24: One comment was received that questions the need for minimum times as opposed to "street clinical time" in initial course requirements.

Response 24: The Board appreciates this comment but directs the commenter to the curricula for guidelines for the amount of time to perform certain tasks, the list of skills that must be satisfactorily performed, and types of clinical contacts with particular ages of patients. While it appears that the minimum

hours set in the rules may lower time requirements for initial courses, the details in the curricula ensure that the skills acquired during the clinical hours must be satisfactorily performed. If the skills cannot be learned and satisfactorily performed after achieving the minimum hours, more clinical time would necessarily be required.

NEW RULE XIV (ARM 24.156.2761) PROCEDURES FOR REVISION OF BOARD-APPROVED EMT CURRICULUM AND STATEWIDE PROTOCOLS:

Comment 25: Two comments were received that opined that the procedures were too cumbersome, time-consuming and unresponsive to individual services. One commenter suggested conditional approval pending official adoption or a process "similar to other professions."

Response 25: The Board notes that since 1993 every application for protocol revision has been provisionally approved because there was no other mechanism in place. Without a process the Board was unable to update the curriculum because there was no efficient way to allow change without sacrificing standards or acting arbitrarily. This process allows the Board to consider requests for change in a timely manner and eliminates the possibility of making changes without having the time to review all of the information provided by the requesting party.

NEW RULE XV (ARM 24.156.2771) SCOPE OF PRACTICE:

Comment 26: One comment was received that questioned whether the rule applied to all licensed personnel or just to EMTs in a pre-hospital setting.

Response 26: This rule applies to EMTs and EMT students in an approved course under the conditions stated in the rule.

Comment 27: One comment was received that stated that the new rule would greatly limit the possibility of providing clinical experiences for EMT-Is and EMT-Ps. The commenter suggested specific wording to eliminate the problem.

Response 27: The Board agrees that the suggested wording is appropriate and voted to amend NEW RULE XV by adopting the commenter's wording.

4. After consideration of the comments, the Board has amended the following rule as proposed, with the following changes, stricken matter interlined, new matter underlined:

24.156.625 UNPROFESSIONAL CONDUCT (1) through (1)(w) remain as proposed.

(x) failing, as a medical director, to supervise, ~~manage,~~ appropriately direct and train emergency medical technicians (EMTs) practicing under the licensee's supervision, according to scope of practice and current board-approved USDOT curriculum

standards including revisions and board-approved statewide protocols for patient care;

(y) remains as proposed.

(z) failing to supervise, ~~manage,~~ appropriately delegate and train physician assistants-certified practicing under the licensee's supervision, according to board-approved utilization plans, scope of practice and generally accepted standards of practice;

(aa) failing to supervise~~, manage~~ and appropriately train residents, as defined in 37-3-305, MCA, practicing under the licensee's supervision, according to scope of practice and generally accepted standards of practice; or

(ab) remains as proposed.

AUTH: 37-1-319, 37-3-203, MCA
IMP: 37-1-131, 37-3-202, 37-3-305, 37-3-309, 37-3-323, MCA

5. After consideration of the comments, the Board has adopted NEW RULE II (ARM 24.156.2705), NEW RULE III (ARM 24.156.2711), NEW RULE IV (ARM 24.156.2713), NEW RULE V (ARM 24.156.2715), NEW RULE VII (ARM 24.156.2719), NEW RULE IX (ARM 24.156.2741), NEW RULE XI (ARM 24.156.2751), NEW RULE XII (ARM 24.156.2754), NEW RULE XIII (ARM 24.156.2757), NEW RULE XIV (ARM 24.156.2761), and NEW RULE XVI (ARM 24.156.2775) exactly as proposed.

6. After consideration of the comments, the Board has adopted NEW RULE I (ARM 24.156.2701), NEW RULE VI (ARM 24.156.2717), NEW RULE VIII (ARM 24.156.2731), NEW RULE X (ARM 24.156.2745), and NEW RULE XV (ARM 24.156.2771) as proposed, with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (ARM 24.156.2701) DEFINITIONS For purposes of the rules set forth in this sub-chapter, the following definitions apply:

(1) "Advanced life support" or "ALS" means any provider that functions at any endorsement level above EMT-B.

(1) and (2) remain as proposed but are renumbered (2) and (3).

(4) "Basic life support" or "BLS" means any provider that functions at the endorsement level of:

(a) EMT-F;

(b) EMT-F with any endorsements; or

(c) EMT-B without any endorsements.

(3) through (6) remain as proposed but are renumbered (5) through (8).

~~(7)~~(9) "Emergency medical service" or "EMS" means ~~a~~ pre-hospital care and transportation ~~provider~~ furnished by a combination of persons licensed by the board and resources that are licensed by the department of public health and human services pursuant to Title 50, chapter 6, MCA. ~~EMS is the official designation for what is commonly referred to as an ambulance service.~~

(8) through (12) remain as proposed but are renumbered (10) through (14).

~~(13) "EMT service" means a pre hospital emergency care service licensed by the department of public health and human services pursuant to Title 50, chapter 6, MCA.~~

(14) through (20) remain as proposed but are renumbered (15) through (21).

AUTH: 37-3-203, 50-6-203, MCA
IMP: 50-6-203, MCA

NEW RULE VI (ARM 24.156.2717) EMT LICENSE RENEWAL (1) through (3) remain as proposed.

(a) become NREMT registered ~~by January 1, 2007~~; or

(b) through (7) remain as proposed.

AUTH: 50-6-203, MCA
IMP: 37-1-131, 37-1-306, 50-6-203, MCA

NEW RULE VIII (ARM 24.156.2731) FEES (1) through (1)(f) remain as proposed.

(g) ~~EMT-D~~ EMT-B biennial renewal fee 30.00

(h) and (i) remain as proposed.

~~(j) late renewal fee 150.00~~

(k) through (m) remain as proposed, but are renumbered (j) through (l).

(2) remains as proposed.

AUTH: 50-6-203, MCA
IMP: 37-1-134, 50-6-203, MCA

NEW RULE X (ARM 24.156.2745) EXAMINATIONS (1) remains as proposed.

(2) An EMS medical director shall be responsible for the conduct of all locally administered examinations and shall assure that all board policies and procedures are followed. EMS medical directors may delegate duties where appropriate, except. ~~Except~~ in the case of first responder and basic EMT levels. ~~,~~ ~~the~~ The EMS medical director may not delegate the administration of the NREMT written examination for the EMT-F or EMT-B levels.

(3) and (4) remain as proposed.

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

NEW RULE XV (ARM 24.156.2771) SCOPE OF PRACTICE (1) ~~An EMT or a student in an approved course may only provide advanced skills (skills above the EMT B licensure level) when:~~

~~(a) under the direct supervision of the EMS medical director who is taking responsibility for the EMT or student's actions; or~~

~~(b) operating with an EMS and functioning under formal, written and board approved standing orders or protocols.~~

An EMT licensed or endorsed beyond the EMT-B level may

perform any acts allowed within the EMT's licensure level or endorsement level when:

(a) under the direct observation of an EMS medical director who is taking responsibility for the EMT; or

(b) operating under a Montana licensed EMS service, licensed at or above the level of the individual and functioning under the formal, written board-approved standing orders or protocols; or

(c) participating in a continuing education program.

(2) An EMT may perform beyond the level of the EMT's individual licensure when functioning as a student in an approved course and under the direct observation of a clinical preceptor. The EMT must perform within the acts allowed at the level for which the EMT is a student candidate.

(3) Except as provided in (2), an EMT may not perform any acts that are beyond the EMT's level of licensure or endorsement.

(2) and (3) remain as proposed but are renumbered (4) and (5).

AUTH: 50-6-203, MCA
IMP: 37-1-131, 50-6-203, MCA

7. After consideration of the comments, the Board has repealed ARM 24.156.1801, 24.156.1802, 24.156.1803, 24.156.1804, 24.156.1805, 24.156.1806, 24.156.1807, 24.156.1901, 24.156.1902, 24.156.1903, 24.156.1904, 24.156.1905, 24.156.2001, 24.156.2002, 24.156.2003, 24.156.2004, 24.156.2005, 24.156.2011, 24.156.2012, 24.156.2013, and 24.156.2014 exactly as proposed.

BOARD OF MEDICAL EXAMINERS
Anne M. Williams, M.D.
President

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State January 16, 2004.